

1 BILL LOCKYER, Attorney General  
of the State of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 MARTIN W. HAGAN, State Bar No. 155553  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
  
6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2094  
Facsimile: (619) 645-2581  
8  
9 Attorneys for Complainant

10 **BEFORE THE**  
**PHYSICAL THERAPY BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1D-2006-64619

13 DONNA SWISHER, P.T.  
1682 Kimberly Woods Drive  
14 El Cajon, CA 92020

**A C C U S A T I O N**

15 Physical Therapist  
License No. PT 14508

16  
17 Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official  
21 capacity as the Executive Officer of the Physical Therapy Board of California, Department of  
22 Consumer Affairs.

23 2. On or about September 15, 1987, the Physical Therapy Board of California  
24 issued Physical Therapist License No. PT 14508 to DONNA SWISHER (Respondent). The  
25 Physical Therapist License was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on September 30, 2007, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

“The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.”

5. Section 2660 of the Code states, in pertinent part:

“The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

“... ”

“(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

“... ”

“(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

“... ”

6. Section 2661 of the Code states, in pertinent part:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a

1 conviction within the meaning of this article. The board may order the license  
2 suspended or revoked, or may decline to issue a license, when the time for appeal has  
3 elapsed, or the judgment of conviction has been affirmed on appeal or when an order  
4 granting probation is made suspending the imposition of sentence, irrespective of a  
5 subsequent order under Section 1203.4 of the Penal Code allowing that person to  
6 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the  
7 verdict of guilty, or dismissing the accusation, information, or indictment.”

8 7. Section 2239 of the Code states, in pertinent part:

9 “The use of . . . alcoholic beverages, to the extent, or in such a manner  
10 as to be dangerous or injurious to the licensee, or to any other person or to the public,  
11 or to the extent that such use impairs the ability of the licensee to practice medicine  
12 safely or more than one misdemeanor or any felony involving the use of any of the  
13 substances referred to in this section . . . constitutes unprofessional conduct. The  
14 record of the conviction is conclusive evidence of such unprofessional conduct.”

15 8. California Code of Regulations, title 16, section 1399.20, states, in pertinent  
16 part:

17 “For the purposes of denial, suspension or revocation of a license, pursuant  
18 to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be  
19 considered to be substantially related to the qualifications, functions or duties of a  
20 person holding a license under the Physical Therapy Practice Act if to a substantial  
21 degree it evidences present or potential unfitness of a person to perform the functions  
22 authorized by the license or approval in a manner consistent with the public health,  
23 safety or welfare. Such crimes or acts shall include but not be limited to the  
24 following:

25 “(a) Violating or attempting to violate, directly or indirectly, or assisting in  
26 or abetting the violation of, or conspiring to violate any provision or term of the  
27 Physical Therapy Practice Act.

28 “. . .

1                   “(c) Violating or attempting to violate any provision or term of the Medical  
2 Practice Act.”

3                                   COST RECOVERY

4                   9.       Section 2661.5 of the Code states, in pertinent part:

5                   “(a) In any order issued in resolution of a disciplinary proceeding before the  
6 board, the board may request the administrative law judge to direct any licensee  
7 found guilty of unprofessional conduct to pay to the board a sum not to exceed the  
8 actual and reasonable costs of the investigation and prosecution of the case....”

9                                   FIRST CAUSE FOR DISCIPLINE

10   (Conviction of a Crime)

11                   10.       Respondent is subject to disciplinary action under section 2660, as defined  
12 by sections 2239, 2660(d), and 2660(i) of the Code in that she was convicted of crimes substantially  
13 related to the qualifications, functions, or duties of a physical therapist or physical therapy assistant.  
14 The circumstances are as follows:

15   The 2006 Conviction

16                                   A.       On or about November 13, 2005, Respondent was involved in  
17 a traffic collision. Upon contact with Respondent, the officer noticed that  
18 Respondent’s eyes were watery and red and that her speech was extremely slurred.  
19 Respondent admitted taking Valium throughout the day and consuming alcohol that  
20 evening. When the officer administered field sobriety tests, Respondent failed to  
21 perform the tests properly. Respondent was subsequently arrested for driving under  
22 the influence.

23                                   B.       On or about December 9, 2005, a Complaint was filed in  
24 Superior Court of California, County of San Diego, charging Respondent with one  
25 count of driving under the influence of alcohol and a drug and under their combined  
26 influence in violation of Vehicle Code section 23152(a); one count of driving while  
27 having a measurable blood alcohol, in violation of Vehicle Code section 23152(b);  
28 and one count of failure to provide evidence of financial responsibility.

1 C. On or about January 25, 2006, in the case entitled *The People*  
2 *of the State of California v. Donna Jean Swisher*, Case No. C256693, before the  
3 Superior Court of California, County of San Diego, East County Division,  
4 Respondent was convicted on her own guilty plea of one count of driving a vehicle  
5 while under the influence of an alcoholic beverage (with a prior) in violation of  
6 Vehicle Code section 23152(a) with a blood alcohol content of .13%. As a result of  
7 the conviction, Respondent was ordered to serve four days in county jail (with 361  
8 days of custody suspended with successful completion of probation), granted  
9 summary probation for the period of five years, and ordered to comply other terms  
10 and conditions.

11 1999 Conviction

12 D. On or about March 7, 1999, while out with friends,  
13 Respondent drank alcoholic beverages then attempted to drive. She was stopped by  
14 the police, tested, failed the tests and was subsequently arrested for driving under the  
15 influence.

16 E. On or about March 17, 1999, a Complaint was filed in  
17 Superior Court of San Diego, County of San Diego, charging Respondent with one  
18 count of driving a vehicle while under the influence of an alcohol beverage or a drug  
19 or under their combined influence, in violation of Vehicle Code section 23152(a);  
20 and one count of driving while having a measurable blood alcohol in violation of  
21 Vehicle Code section 23152(b).

22 F. On or about April 7, 1999, in the case entitled *The People of*  
23 *the State of California v. Donna Jean Swisher*, Case No. T-207035, before the  
24 Superior Court of California, County of San Diego, Respondent was convicted on her  
25 own guilty plea of one count of driving a vehicle while under the influence of an  
26 alcoholic beverage in violation of Vehicle Code section 23152(a) with a blood  
27 alcohol content of .22%. As a result of the conviction, Respondent was granted  
28 summary probation for the period of five years with terms and conditions.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

11. Respondent is further subject to disciplinary action under section 2660, as defined by 2660(i) and 2239 for unprofessional conduct because she has more than one conviction for driving under the influence of alcohol.

12. Paragraph 10, above, is incorporated by reference and realleged as if fully set forth herein.

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License No. PT 14508, issued to Donna Swisher, P.T.;

2. Ordering Donna Swisher to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: October 2, 2006

Original Signed By: \_\_\_\_\_  
STEVEN K. HARTZELL  
Executive Officer  
Physical Therapy Board of California  
Department of Consumer Affairs  
State of California  
Complainant